

Letter of Findings: 04-20110405
Sales and Use Tax
For the Tax Years 2008 and 2009

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ISSUE

I. Sales and Use Tax – Imposition.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); USAir, Inc. v. Indiana Dep't of State Revenue, 623 N.E.2d 466 (Ind. Tax Ct. 1993).

Taxpayer protests the assessment of use tax on purchases of tangible personal property.

STATEMENT OF FACTS

Taxpayer is an Indiana Limited Liability Company (LLC), which builds single family residences. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit for tax years 2008 and 2009. Pursuant to the audit, the Department determined that Taxpayer purchased and used certain tangible personal property without paying sales tax or self-assessing use tax and made an assessment of use tax and interest. Taxpayer protested the imposition of use tax on certain of its purchases. After the audit and prior to the hearing, Taxpayer presented additional documentation that was not available at the time of audit. After reviewing the additional documentation, the auditor agreed to make several adjustments that were presented to Taxpayer in the form of a revised spreadsheet. Nonetheless, Taxpayer continued its protest on the remaining assessments. An administrative hearing was held, and this Letter of Findings ensues. Additional facts will be provided as necessary.

I. Sales and Use Tax – Imposition.

DISCUSSION

The Department assessed use tax on certain purchases where Taxpayer did not have documentation showing that sales tax was paid at the time of the purchases. Taxpayer, to the contrary, claimed that it was not responsible for the use tax because sales tax was assessed on the same transactions.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). Indiana also imposes a complementary excise tax called "the use tax" on "the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC § 6-2.5-3-2(a).

By complementing the sales tax, the use tax ensures that non-exempt retail transactions (particularly out-of-state retail transactions) that escape sales tax liability are nevertheless taxed. Id.; USAir, Inc. v. Indiana Dep't of State Revenue, 623 N.E.2d 466, 468–69 (Ind. Tax Ct. 1993). The use tax ensures that, after such goods arrive in Indiana, the retail purchasers of the goods bear their fair share of the tax burden. An exemption from use tax is granted for transactions where the sales tax was paid at the time of purchase pursuant to IC § 6-2.5-3-4.

During the protest, Taxpayer submitted documentation for the transactions with "Vendor GT" to demonstrate that sales tax had been assessed on these transactions. For several of the transactions with "Vendor GT," Taxpayer documentation did demonstrate that sales tax was imposed on these transactions. However, for the transactions with "Vendor GT" in the invoices numbered 2009-921 and 2009-1438, sales tax was not imposed on these purchases. Thus, for the transactions with "Vendor GT" in the invoices numbered 2009-921 and 2009-1438, Taxpayer has not met its burden of proof demonstrating that the proposed assessment is not correct.

FINDING

Taxpayer's assessments will be adjusted to reflect the items, to which the auditor agreed, as reflected in the revised spreadsheets that were sent to Taxpayer prior to the hearing. Additionally, Taxpayer's protest is sustained for the transactions with "Vendor GT" where sales tax was imposed on the transactions. However, Taxpayer's protest is denied for the transactions with "Vendor GT" in the invoices numbered 2009-921 and 2009-1438.

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